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October 12, 2021

By ECF and Email

The Honorable Lewis A. Kaplan
United States Magistrate Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Daniel Kleeberg et al. v. Lester Eber et al.*, 1:16-cv-09517-LAK-KHP
Preliminary Injunction Proposals and Extension of the TRO

Dear Judge Kaplan,

I write with the knowledge of Messrs. Mulry and Santoro to advise the Court that, despite making some progress, the parties have been unable to agree on all the provisions for a preliminary injunction. Attached to this letter are the two different proposals, along with a redline showing the differences.

The parties respectfully request a conference with the Court to discuss the areas of disagreement. To summarize in advance, without argument, these are the issues that remain in dispute:

1. Whether to carve out an exception for a credit agreement with Eber-CT's lender, without at least requiring notice to Plaintiffs of transactions that would be outside the ordinary course of business?
2. Whether Defendants should be permitted to make "tax distributions" from Eber-CT without notice to Plaintiffs or consent from the Court, when the next estimated tax deadline is not until January 17, 2022?
3. Whether the report of recent transactions (a) should be in the form of a sworn declaration under penalty of perjury, and (b) should include all transactions that would have violated the order if it had been entered earlier, or should be limited to transactions involving shares of stock or membership units?

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4. Whether the injunction should prohibit any kind of encumbrance outside the ordinary course of business, or if it should be limited to prohibiting grants of security interests and liens?

In the meantime, the parties jointly request that the Court extend the current temporary restraining order by another seven days, until and including October 20, 2021 (or, if a conference cannot be scheduled before then, until and including such other date as the Court sets for ruling on the preliminary injunction).

We thank the Court for its attention to this matter.

Respectfully submitted,



Brian C. Brook

cc: All counsel of record